

106TH CONGRESS
1ST SESSION

H. R. 2614

To amend the Small Business Investment Act to make improvements to the certified development company program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 1999

Mr. TALENT (for himself, Ms. VELÁZQUEZ, Mrs. KELLY, Ms. MILLENDER-McDONALD, Mr. HILL of Montana, Mr. DAVIS of Illinois, Mrs. BONO, Mrs. JONES of Ohio, Ms. BERKLEY, Mrs. NAPOLITANO, Mr. PASCRELL, Mrs. MCCARTHY of New York, Mr. SWEENEY, Mr. COMBEST, and Mr. DEMINT) introduced the following bill; which was referred to the Committee on Small Business

A BILL

To amend the Small Business Investment Act to make improvements to the certified development company program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Certified Development
5 Company Program Improvements Act of 1999”.

6 **SEC. 2. WOMEN-OWNED BUSINESSES.**

7 Section 501(d)(3)(C) of the Small Business Invest-
8 ment Act (15 U.S.C. 695(d)(3)(C)) is amended by insert-

1 ing before the comma “or women-owned business develop-
2 ment”.

3 **SEC. 3. MAXIMUM DEBENTURE SIZE.**

4 Section 502(2) of the Small Business Investment Act
5 of 1958 (15 U.S.C. 696(2)) is amended to read as follows:

6 “(2) Loans made by the Administration under
7 this section shall be limited to \$1,000,000 for each
8 such identifiable small business concern, except
9 loans meeting the criteria specified in section
10 501(d)(3), which shall be limited to \$1,300,000 for
11 each such identifiable small business concern.”.

12 **SEC. 4. FEES.**

13 Section 503(f) of the Small Business Investment Act
14 of 1958 (15 U.S.C. 697(f)) is amended to read as follows:

15 “(f) EFFECTIVE DATE.—The fees authorized by sub-
16 sections (b) and (d) shall apply to financings approved by
17 the Administration on or after October 1, 1996, but shall
18 not apply to financings approved by the Administration
19 on or after October 1, 2003.”.

20 **SEC. 5. PREMIER CERTIFIED LENDERS PROGRAM.**

21 Section 217(b) of the Small Business Reauthoriza-
22 tion and Amendments Act of 1994 (relating to section 508
23 of the Small Business Investment Act) is repealed.

1 **SEC. 6. SALE OF CERTAIN DEFAULTED LOANS.**

2 Section 508 of the Small Business Investment Act
3 of 1958 (15 U.S.C. 697e) is amended—

4 (1) in subsection (a), by striking “On a pilot
5 program basis, the” and inserting “The”;

6 (2) by redesignating subsections (d) through (i)
7 as subsections (e) through (j), respectively;

8 (3) in subsection (f) (as redesignated by para-
9 graph (2)), by striking “subsection (f)” and insert-
10 ing “subsection (g)”;

11 (4) in subsection (h) (as redesignated by para-
12 graph (2)), by striking “subsection (f)” and insert-
13 ing “subsection (g)”;

14 (5) by inserting after subsection (c) the fol-
15 lowing:

16 “(d) SALE OF CERTAIN DEFAULTED LOANS.—

17 “(1) NOTICE.—If, upon default in repayment,
18 the Administration acquires a loan guaranteed under
19 this section and identifies such loan for inclusion in
20 a bulk asset sale of defaulted or repurchased loans
21 or other financings, it shall give prior notice thereof
22 to any certified development company which has a
23 contingent liability under this section. The notice
24 shall be given to the company as soon as possible
25 after the financing is identified, but not less than 90
26 days before the date the Administration first makes

1 any records on such financing available for examina-
 2 tion by prospective purchasers prior to its offering in
 3 a package of loans for bulk sale.

4 “(2) LIMITATIONS.—The Administration shall
 5 not offer any loan described in paragraph (1) as
 6 part of a bulk sale unless it—

7 “(A) provides prospective purchasers with
 8 the opportunity to examine the Administration’s
 9 records with respect to such loan; and

10 “(B) provides the notice required by para-
 11 graph (1).”.

12 **SEC. 7. LOAN LIQUIDATION.**

13 (a) LIQUIDATION AND FORECLOSURE.—Title V of
 14 the Small Business Investment Act of 1958 (15 U.S.C.
 15 695 et seq.) is amended by adding at the end the fol-
 16 lowing:

17 **“SEC. 510. FORECLOSURE AND LIQUIDATION OF LOANS.**

18 “(a) DELEGATION OF AUTHORITY.—In accordance
 19 with this section, the Administration shall delegate to any
 20 qualified State or local development company (as defined
 21 in section 503(e)) that meets the eligibility requirements
 22 of subsection (b)(1) the authority to foreclose and liq-
 23 uidate, or to otherwise treat in accordance with this sec-
 24 tion, defaulted loans in its portfolio that are funded with

1 the proceeds of debentures guaranteed by the Administra-
2 tion under section 503.

3 “(b) ELIGIBILITY FOR DELEGATION.—

4 “(1) REQUIREMENTS.—A qualified State or
5 local development company shall be eligible for a del-
6 egation of authority under subsection (a) if—

7 “(A) the company—

8 “(i) has participated in the loan liq-
9 uidation pilot program established by the
10 Small Business Programs Improvement
11 Act of 1996 (15 U.S.C. 695 note), as in
12 effect on the day before promulgation of
13 final regulations by the Administration im-
14 plementing this section;

15 “(ii) is participating in the Premier
16 Certified Lenders Program under section
17 508; or

18 “(iii) during the 3 fiscal years imme-
19 diately prior to seeking such a delegation,
20 has made an average of not less than 10
21 loans per year that are funded with the
22 proceeds of debentures guaranteed under
23 section 503; and

24 “(B) the company—

25 “(i) has 1 or more employees—

1 “(I) with not less than 2 years of
2 substantive, decision-making experi-
3 ence in administering the liquidation
4 and workout of problem loans secured
5 in a manner substantially similar to
6 loans funded with the proceeds of de-
7 bentures guaranteed under section
8 503; and

9 “(II) who have completed a train-
10 ing program on loan liquidation devel-
11 oped by the Administration in con-
12 junction with qualified State and local
13 development companies that meet the
14 requirements of this paragraph; or

15 “(ii) submits to the Administration
16 documentation demonstrating that the
17 company has contracted with a qualified
18 third-party to perform any liquidation ac-
19 tivities and secures the approval of the
20 contract by the Administration with re-
21 spect to the qualifications of the contractor
22 and the terms and conditions of liquidation
23 activities.

24 “(2) CONFIRMATION.—On request the Adminis-
25 tration shall examine the qualifications of any com-

pany described in subsection (a) to determine if such company is eligible for the delegation of authority under this section. If the Administration determines that a company is not eligible, the Administration shall provide the company with the reasons for such ineligibility.

“(c) SCOPE OF DELEGATED AUTHORITY.—

“(1) IN GENERAL.—Each qualified State or local development company to which the Administration delegates authority under section (a) may with respect to any loan described in subsection (a)—

“(A) perform all liquidation and foreclosure functions, including the purchase in accordance with this subsection of any other indebtedness secured by the property securing the loan, in a reasonable and sound manner according to commercially accepted practices, pursuant to a liquidation plan approved in advance by the Administration under paragraph (2)(A);

“(B) litigate any matter relating to the performance of the functions described in subparagraph (A), except that the Administration may—

“(i) defend or bring any claim if—

1 “(I) the outcome of the litigation
2 may adversely affect the Administra-
3 tion’s management of the loan pro-
4 gram established under section 502;
5 or

6 “(II) the Administration is enti-
7 tled to legal remedies not available to
8 a qualified State or local development
9 company and such remedies will ben-
10 efit either the Administration or the
11 qualified State or local development
12 company; or

13 “(ii) oversee the conduct of any such
14 litigation; and

15 “(C) take other appropriate actions to
16 mitigate loan losses in lieu of total liquidation
17 or foreclosures, including the restructuring of a
18 loan in accordance with prudent loan servicing
19 practices and pursuant to a workout plan ap-
20 proved in advance by the Administration under
21 paragraph (2)(C).

22 “(2) ADMINISTRATION APPROVAL.—

23 “(A) LIQUIDATION PLAN.—

24 “(i) IN GENERAL.—Before carrying
25 out functions described in paragraph

1 (1)(A), a qualified State or local develop-
2 ment company shall submit to the Admin-
3 istration a proposed liquidation plan.

4 “(ii) ADMINISTRATION ACTION ON
5 PLAN.—

6 “(I) TIMING.—Not later than 15
7 business days after a liquidation plan
8 is received by the Administration
9 under clause (i), the Administration
10 shall approve or reject the plan.

11 “(II) NOTICE OF NO DECISION.—

12 With respect to any plan that cannot
13 be approved or denied within the 15-
14 day period required by subclause (I),
15 the Administration shall within such
16 period provide in accordance with sub-
17 paragraph (E) notice to the company
18 that submitted the plan.

19 “(iii) ROUTINE ACTIONS.—In carrying
20 out functions described in paragraph
21 (1)(A), a qualified State or local develop-
22 ment company may undertake routine ac-
23 tions not addressed in a liquidation plan
24 without obtaining additional approval from
25 the Administration.

1 “(B) PURCHASE OF INDEBTEDNESS.—

2 “(i) IN GENERAL.—In carrying out
3 functions described in paragraph (1)(A), a
4 qualified State or local development com-
5 pany shall submit to the Administration a
6 request for written approval before com-
7 mitting the Administration to the purchase
8 of any other indebtedness secured by the
9 property securing a defaulted loan.

10 “(ii) ADMINISTRATION ACTION ON RE-
11 QUEST.—

12 “(I) TIMING.—Not later than 15
13 business days after receiving a request
14 under clause (i), the Administration
15 shall approve or deny the request.

16 “(II) NOTICE OF NO DECISION.—
17 With respect to any request that can-
18 not be approved or denied within the
19 15-day period required by subclause
20 (I), the Administration shall within
21 such period provide in accordance
22 with subparagraph (E) notice to the
23 company that submitted the request.

24 “(C) WORKOUT PLAN.—

1 “(i) IN GENERAL.—In carrying out
2 functions described in paragraph (1)(C), a
3 qualified State or local development com-
4 pany shall submit to the Administration a
5 proposed workout plan.

6 “(ii) ADMINISTRATION ACTION ON
7 PLAN.—

8 “(I) TIMING.—Not later than 15
9 business days after a workout plan is
10 received by the Administration under
11 clause (i), the Administration shall
12 approve or reject the plan.

13 “(II) NOTICE OF NO DECISION.—

14 With respect to any workout plan that
15 cannot be approved or denied within
16 the 15-day period required by sub-
17 clause (I), the Administration shall
18 within such period provide in accord-
19 ance with subparagraph (E) notice to
20 the company that submitted the plan.

21 “(D) COMPROMISE OF INDEBTEDNESS.—

22 In carrying out functions described in para-
23 graph (1)(A), a qualified State or local develop-
24 ment company may—

1 “(i) consider an offer made by an obli-
2 gor to compromise the debt for less than
3 the full amount owing; and

4 “(ii) pursuant to such an offer, re-
5 lease any obligor or other party contin-
6 gently liable, if the company secures the
7 written approval of the Administration.

8 “(E) CONTENTS OF NOTICE OF NO DECI-
9 SION.—Any notice provided by the Administra-
10 tion under subparagraphs (A)(ii)(II),
11 (B)(ii)(II), or (C)(ii)(II)—

12 “(i) shall be in writing;

13 “(ii) shall state the specific reason for
14 the Administration’s inability to act on a
15 plan or request;

16 “(iii) shall include an estimate of the
17 additional time required by the Adminis-
18 tration to act on the plan or request; and

19 “(iv) if the Administration cannot act
20 because insufficient information or docu-
21 mentation was provided by the company
22 submitting the plan or request, shall speci-
23 fy the nature of such additional informa-
24 tion or documentation.

1 “(3) CONFLICT OF INTEREST.—In carrying out
2 functions described in paragraph (1), a qualified
3 State or local development company shall take no ac-
4 tion that would result in an actual or apparent con-
5 flict of interest between the company (or any em-
6 ployee of the company) and any third party lender,
7 associate of a third party lender, or any other person
8 participating in a liquidation, foreclosure, or loss
9 mitigation action.

10 “(d) SUSPENSION OR REVOCATION OF AUTHOR-
11 ITY.—The Administration may revoke or suspend a dele-
12 gation of authority under this section to any qualified
13 State or local development company, if the Administration
14 determines that the company—

15 “(1) does not meet the requirements of sub-
16 section (b)(1);

17 “(2) has violated any applicable rule or regula-
18 tion of the Administration or any other applicable
19 law; or

20 “(3) fails to comply with any reporting require-
21 ment that may be established by the Administration
22 relating to carrying out of functions described in
23 paragraph (1).

24 “(e) REPORT.—

1 “(1) IN GENERAL.—Based on information pro-
2 vided by qualified State and local development com-
3 panies and the Administration, the Administration
4 shall annually submit to the Committees on Small
5 Business of the House of Representatives and of the
6 Senate a report on the results of delegation of au-
7 thority under this section.

8 “(2) CONTENTS.—Each report submitted under
9 paragraph (1) shall include the following informa-
10 tion:

11 “(A) With respect to each loan foreclosed
12 or liquidated by a qualified State or local devel-
13 opment company under this section, or for
14 which losses were otherwise mitigated by the
15 company pursuant to a workout plan under this
16 section—

17 “(i) the total cost of the project fi-
18 nanced with the loan;

19 “(ii) the total original dollar amount
20 guaranteed by the Administration;

21 “(iii) the total dollar amount of the
22 loan at the time of liquidation, foreclosure,
23 or mitigation of loss;

1 “(iv) the total dollar losses resulting
2 from the liquidation, foreclosure, or mitiga-
3 tion of loss; and

4 “(v) the total recoveries resulting
5 from the liquidation, foreclosure, or mitiga-
6 tion of loss, both as a percentage of the
7 amount guaranteed and the total cost of
8 the project financed.

9 “(B) With respect to each qualified State
10 or local development company to which author-
11 ity is delegated under this section, the totals of
12 each of the amounts described in clauses (i)
13 through (v) of subparagraph (A).

14 “(C) With respect to all loans subject to
15 foreclosure, liquidation, or mitigation under this
16 section, the totals of each of the amounts de-
17 scribed in clauses (i) through (v) of subpara-
18 graph (A).

19 “(D) A comparison between—

20 “(i) the information provided under
21 subparagraph (C) with respect to the 12-
22 month period preceding the date on which
23 the report is submitted; and

24 “(ii) the same information with re-
25 spect to loans foreclosed and liquidated, or

1 otherwise treated, by the Administration
2 during the same period.

3 “(E) The number of times that the Admin-
4 istration has failed to approve or reject a liq-
5 uidation plan in accordance with subparagraph
6 (A)(i), a workout plan in accordance with sub-
7 paragraph (C)(i), or to approve or deny a re-
8 quest for purchase of indebtedness under sub-
9 paragraph (B)(i), including specific information
10 regarding the reasons for the Administration’s
11 failure and any delays that resulted.”.

12 (b) REGULATIONS.—

13 (1) IN GENERAL.—Not later than 150 days
14 after the date of enactment of this Act, the Adminis-
15 trator shall issue such regulations as may be nec-
16 essary to carry out section 510 of the Small Busi-
17 ness Investment Act of 1958, as added by subsection
18 (a) of this section.

19 (2) TERMINATION OF PILOT PROGRAM.—Begin-
20 ning on the date which the final regulations are
21 issued under paragraph (1), section 204 of the
22 Small Business Programs Improvement Act of 1996
23 (15 U.S.C. 695 note) shall cease to have effect.

○